Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

HAROLD SAMUEL WROBEL,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

PAUL L. HOFFMAN
Counsel of Record

BOSTWICK & HOFFMAN LLP

100 Wilshire Boulevard, Suite 1000
Santa Monica, California 90401-1198
(310) 260-9585

HARLAND W. BRAUN

2049 Century Park East, Suite 1800
Los Angeles, California 90067-3130
(310) 277-4777

Attorneys for Petitioner
HAROLD SAMUEL WROBEL

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44 pp

QUESTIONS PRESENTED

1. Does the "corrupt motive" doctrine provide a defense to a criminal defendant who is reasonably unaware of the unlawfulness of "structuring" activity to a charge of conspiracy to "structure" under 18 U.S.C. §371 and 31 U.S.C. §5324?

2. Did Congress intend in the Money Laundering Suppression Act of 1994 to make the violation 31 U.S.C. §5324 a strict liability crime?

PARTIES TO THE PROCEEDING

The parties to the proceedings of this case are Harold Samuel Wrobel and the United States of America.

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1998

No. 98-_____

Harold Samuel Wrobel,
Petitioner,

v.

United States of America,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this case on April 17, 1998.

OPINIONS BELOW

The Corrected Judgment, including sentence under the Sentencing Reform Act, of the District Court is reproduced in the Appendix ("Pet. App.") at Pet. App. 6a. The opinion of the Court of Appeals for the Ninth Circuit is reproduced at Pet. App. 2a. The order of the Court of Appeals dated June 10, 1998, denying rehearing and rehearing en banc is reproduced at Pet. App. 1. None of the opinions are reported.

JURISDICTION

The judgment of the Court of Appeals was entered April 17, 1998. A timely petition for rehearing was denied on June 10, 1998. Pet. App. 1a. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution, as well as the provisions of 18 U.S.C. §371 and 31 U.S.C. §5324, are reprinted at pages 15a - 17a.

STATEMENT

A. The Underlying Facts.

Petitioner is an attorney and at the time of the Indictment was Vice President and General Counsel of Premier Radio Networks, a highly successful company in the radio industry. He was asked by law school classmate and long-time friend, Gary Salomons, an attorney for several major Las Vegas casinos, to exchange cash for cashiers checks believing he was performing this service for legal gamblers seeking to preserve the privacy of their gambling successes. Instead, Petitioner stumbled into a government sting operation. The cash he converted to cashiers checks was really government money.

Petitioner candidly admitted that he had conducted cash transactions at banks to avoid reporting requirements imposed on banking institutions not knowing that it was illegal for him to do so. He made the first deposits for Salomons in mid-October, 1994. Petitioner believed that Salomons, who represented several Las Vegas casinos in collection work, was asking him to assist gamblers trying to shield their legal winnings in a manner that violated no California laws. One additional reason Petitioner believed that he was dealing with gambling proceeds was that the other person involved in these transactions was Jerry Silverstein, a man Petitioner knew was a high level employee of a casino in Las Vegas. In all, Petitioner assisted Salomons five times between October 1994 and March 1995. All of these transactions took a total of only a few hours of Petitioner's time. He was paid a few thousand dollars for his services.

B. The Trial.

Petitioner was charged with seven counts in the Indictment. The First Count charged Petitioner with a conspiracy to violate 18 U.S.C. §1956(a)(3)(b) and (c) by entering into transactions designed to conceal and disguise the nature, location, source, ownership, and control of the proceeds to avoid transaction reporting requirements under federal law. Count Two charged Petitioner with a conspiracy to structure in violation of 31 U.S.C. §5324(a)(2) and (a)(3). Counts Three to Seven charged Petitioner with laundering drug money in violation of 28 U.S.C. §§1956(a)(3)(b) and (c).

Count Three was dismissed at the Government's request. The jury returned a verdict of Not Guilty on Count One and Counts Four to Seven. Petitioner was found guilty of conspiracy to "structure" in Count Two. Petitioner was not charged with any substantive "structuring" count apart from the conspiracy charge.

The government sought to prove that Petitioner knowingly laundered drug money. Petitioner testified of his belief that he was dealing in legal gambling proceeds and not drug money. The jury believed Petitioner on this crucial issue. He was acquitted on all of the drug related charges.

Petitioner asserted a defense at trial that he did not have the kind of evil motive or knowledge of the unlawfulness of "structuring" required to convict him of conspiracy to "structure" under 18 U.S.C. §371 and 31 U.S.C. §5324. Petitioner did not know that "structuring" was unlawful and was acting only to avoid what he

reasonably believed to be paperwork requirements imposed on banking institutions.

The District Judge refused to allow testimony on Petitioner's mental state regarding the lawfulness of "structuring" activity, and refused to give Petitioner's proposed jury instruction which would have required the Government to prove his knowledge of the unlawfulness of his activities to convict him of conspiracy to "structure." The District Judge also refused to allow Petitioner to argue that his lack of knowledge of the unlawfulness of "structuring" activity provided him with a defense in these circumstances.

At trial, Petitioner sought to present evidence of his actual mental state with respect to the lawfulness of "structuring," but was prevented from doing so. He sought to prove either that his activity was the sort of "innocent" or "inadvertent" activity that Congress did not seek to criminalize in its response to *Ratzlaf v. United States*, 510 U.S. 135 (1994), or that the "corrupt motive" doctrine required proof of his knowledge of the illegality of "structuring" to sustain a conspiracy to "structure" charge, regardless of the mental state required to prove an underlying substantive charge of "structuring" under 31 U.S.C. §5324.

C. The Court of Appeals Ruling.

The Court of Appeals for the Ninth Circuit affirmed the district court's rulings and Petitioner's conviction. The Ninth Circuit found that Petitioner's mental state regarding the lawfulness of "structuring" was irrelevant in any respect to the crime of "structuring"

under 31 U.S.C. §5324 after the Money Laundering Suppression Act of 1994, Pub.L.No. 103-325, 108 (1994) (The "1994 Act"). Pet. App. 2a-3a. The Ninth Circuit did not resolve the important issue of whether the "corrupt motive" doctrine requires a showing of wrongful intent in the context of an alleged conspiracy to commit a *malum prohibitum* crime. *Id.* at 2a.

REASONS FOR GRANTING THE PETITION

Petitioner, a promising attorney and entrepreneur who had no idea that his actions were unlawful, was trapped under a statute which criminalizes conduct that is typical of normal financial transactions in our society. It was precisely for this kind of regulatory *malum prohibitum* crime that the "corrupt motive" doctrine requiring proof of knowledge of illegality in conspiracy prosecutions retains its historical validity. The District Court refused to accept the applicability of the doctrine.

This case squarely presents the issue of the continuing validity of the "corrupt motive" doctrine in criminal conspiracy prosecutions arising out of agreements to commit *malum prohibitum* crimes when the defendant does not know that the object of the conspiracy is unlawful. Petitioner was not convicted of any crimes relating to the laundering of drug money. He was convicted of reaching an agreement to "structure," with the crime completed as soon as the agreement was reached and any overt act, however minor, was accomplished, even if no actual "structuring" activity occurred.

As formulated by the district court and affirmed on appeal, criminal conspiracy liability in this case was imposed on a strict liability basis, with no opportunity for Petitioner to testify about his mental state with respect to the unlawfulness of "structuring" activity before the jury.

This approach raises substantial constitutional questions under the Due Process Clause and about the intended scope of criminal liability of 18 U.S.C. §371 and 31 U.S.C. §5324 which should be answered by this Court. This case provides the perfect vehicle for the resolution of these issues.

This case also raises the question of whether Congress intended in the Money Laundering Suppression Act of 1994 to make 31 U.S.C. §5324 a strict liability crime. The courts below interpreted the 1994 Act as creating a strict liability crime for "structuring." This Court should take this opportunity to clarify the mens rea element in 31 U.S.C. §5324 in the aftermath of the 1994 Act.

I. THE QUESTION OF WHETHER THE "CORRUPT MOTIVE" DOCTRINE APPLIES TO FEDERAL CONSPIRACY CHARGES INVOLVING *MALUM PROHIBITUM* WAS EXPLICITLY LEFT OPEN BY THIS COURT, IN *UNITED STATES v. FEOLA*, AND SHOULD NOW BE RESOLVED BY THIS COURT.

A. In *United States v. Feola*, This Court Explicitly Left Open Whether the "Corrupt Motive" Doctrine Applies to Conspiracy Charges Involving *Malum Prohibitum* Crimes.

The issue of whether the criminal net may be drawn as broadly as occurred in this case in the context of *malum prohibitum*, regulatory crimes was explicitly left open by this Court in *United States v. Feola*, 420 U.S. 671, 691 (1975). In *Feola*, this Court explicitly left open the question of whether the "corrupt motive" doctrine applied to federal criminal conspiracy charges involving *malum prohibitum* crimes so that the government would have to demonstrate that a defendant had some knowledge that his acts were wrongful before the broad sweep of federal criminal conspiracy laws could be applied to such a defendant.[1]

The application of the "corrupt motive" doctrine in this case would require that the Government prove that a person know that "structuring" was unlawful before vicarious criminal conspiracy liability is imposed on a person simply for the act of agreeing to "structure." If the "corrupt motive" doctrine applies here in any form, Petitioner's conviction must be reversed as a matter of law; because the jury, properly instructed, should have decided whether Petitioner had a "corrupt motive," or

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[1] This Court's decision in *United States v. Freed*, 401 U.S. 601, 609 n. 14 (1971), also left this issue unresolved. All that this Court did in note 14 of its opinion is state that it is not necessary for it to decide the applicability of the "corrupt motive" doctrine in that case because the conduct at issue in *Freed*, an agreement to acquire hand grenades, was not "innocent in itself." This is the same conclusion that the Court in *Feola* reached four years later in the context of an assault. This case squarely presents the issue left open in *Freed* and *Feola*.

whether his mental state precludes the imposition of liability for a criminal conspiracy.[2]

In *Feola*, the issue was whether a conviction of conspiracy to assault a federal officer required the Government to prove that the defendant knew that the victim was a federal officer. This Court found first that the substantive offense of assault on a federal officer did not require knowledge that the victim was a federal officer, in large part because the assault was an inherently wrongful act and the Court did not discern a Congressional intent to penalize only those who engaged in such assaults because of an "anti-federal" purpose. *Feola, supra*, 420 U.S. 684-85. This Court also found that, in the context of the inherently wrongful act of assault, there was no requirement to prove knowledge that the victim was a federal officer to convict a defendant of conspiracy to assault a federal officer. *Id.*

In addition, this Court explicitly declined to decide the issue presented in this case: whether a criminal conspiracy to commit a *malum prohibitum* crime must be animated by a corrupt motive to do wrong. *Id.*, at 691. The Court discussed the "Powell Doctrine" and cited to the same famous Harvard Law Review article relied upon by Petitioner in his appeal. *Id.* Indeed, this Court explicitly limited its holding in *Feola* to a situation

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[2] The Ninth Circuit declined to reach this issue because it found that "there was substantial evidence that Wrobel's motives were hardly pure." Pet. App. 4a. Of course, this decision was for the jury to make, not an appellate court.

in which the conduct proscribed is inherently wrongful. *Id.*, at 691-92.

B. Petitioner's Case Squarely Presents the Question Left Open in *Feola*, as "Structuring" Is a *Malum Prohibitum* Crime and Petitioner Is Charged with Conspiracy to "Structure."

"Structuring" is the paradigm of a *malum prohibitum* crime. This Court has recognized that the conduct in a "structuring" offense is not inherently wrongful or blameworthy. *Ratzlaf, supra*, 510 U.S. at 146. Indeed, the economic life of our society involves a side variety of organizing or structuring financial affairs to avoid taxation or other government requirements and the vast majority of these situations involve no criminal activity.

The anti-structuring provisions of Title 31 fit into this category. There is nothing inherently illegal, evil or immoral about organizing one's financial affairs to avoid government regulatory requirements, especially requirements, which, on the surface, appear to be directed at banks and not depositors. Indeed, our tax system encourages such conduct and a huge industry of tax lawyers and advisors depends upon the ordinary structuring of the financial activities of individuals and corporations.

Thus, as this Court recognized in *Ratzlaf*, there are many innocent reasons to "structure" cash transactions to avoid triggering the reporting requirements. 510 U.S. at 142-146. Petitioner's reason was that he did not wish to be delayed by the necessity of filling out forms and he assumed that the people he was getting cashiers checks

for wanted confidentiality about their legal gambling earnings. As this Court stated in *Ratzlaf*, "we are unpersuaded by the argument that structuring is so obviously 'evil' or inherently 'bad' that the 'willfulness' requirement is satisfied irrespective of the defendant's knowledge of the illegality of structuring." *Id.*, at 146. It can hardly be argued that knowledge of "structuring" is illegal is so widespread that knowledge of its illegality should be imputed to everyone in our society.

Though Congress for the substantive offense of "structure" under 31 U.S.C. §5324, eliminated the "willfulness" element in the 1994 Act, this change does not eliminate the due process issues raised by the imposition of criminal sanctions for a conspiracy to structure in the absence of proof that a defendant knew that structuring was illegal. The Congressional action does not alter the fact that there is nothing inherently "evil" or "bad" about the conduct that comprises "structuring." The absence of proof of knowledge of illegality creates the risk, graphically illustrated by Petitioner's plight in this case, that innocent people will be found to be criminals and have their lives destroyed for conduct reasonable people would not know is illegal.[3]

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[3] The dramatic consequences of dispensing with the knowledge requirement in the context of a crime like "structuring" is apparent from the sentencing in this case. Though Petitioner's structuring conviction would have led to probation, once convicted the District Judge could, and did, under a preponderance of the evidence standard, make factual findings that dramatically increased his sentence and the stigma of his sentence.

C. This Court Should Hold That the "Corrupt Motive" Doctrine is Applicable to Criminal Conspiracies Under 18 U.S.C. §371 to Commit *Malum Prohibitum* Crimes Like "Structuring" Under 31 U.S.C. §5324.

The "corrupt motive" doctrine has a venerable pedigree and was recognized as the state of the law in the famous Harvard Law Review Developments article in 1959. "Developments in the Law of Conspiracy," 72 Harv. L. Rev. 920, 936-37 (1959) (the doctrine "has won general acceptance in this country."); *People v. Powell*, 63 N.Y. 88 (1875); *see also*, La Fave and Scott, Criminal Law (2d Ed. 1986), at 540. As the court in *Commonwealth v. Benesch*, 290 Mass. 125, 134, 194 N.E. 905, 910 (1935), stated: "[i]n the case of conspiracy, as with other common law crimes, it is necessary that criminal intent be shown. Speaking in general terms, there must be an intent to do wrong."

The doctrine will ordinarily have no application to *malum in se* crimes because the inherently wrongful nature of the conduct at issue supplies a corrupt motive sufficient to satisfy the rationale of the doctrine. *Landen v. United States*, 299 Fed. 75 (6th Cir. 1924). However, if a *malum prohibitum* crime is the objective of the conspiracy, the doctrine should be applied to prevent a conspiracy charge from reaching innocent conduct by people who did not know that their conduct ran afoul of the regulatory reach of the criminal law.

The breadth of federal conspiracy statutes and the scope of potential vicarious criminal liability under them strongly supports the application of the doctrine in a case like this. The rationale of conspiracy law is to address

the increased dangers of concerted criminal conduct. But this rationale lacks force when the conspirators agree to act in furtherance of an objective they believe to be lawful.[4]

The application of the doctrine in this case is required because mere knowledge of the bank's reporting requirements for transactions over $10,000 do not put an ordinary person on notice that organizing ordinary financial transactions in a way to avoid such reporting would be criminal. Thus, those persons who seek to avoid scrutiny by the Government for completely lawful reasons may be trapped and subjected to substantial criminal penalties.

D. The Due Process Clause Requires the Government to Prove an Evil Intent to Convict Petitioner of a Conspiracy to Structure in These Circumstances.

Due process requires the application of the "corrupt motive" doctrine to Petitioner's case. To convict Petitioner of conspiracy to "structure" the government had to prove at minimum, he had the mens rea required for the underlying substantive offense. After the 1994 legislation modifying the "wilfulness" requirement for a "structuring" conviction in response to the *Ratzlaf* decision, the issue of whether due process requires that

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[4] Note, Harv. L. Rev. 96, 99 (1924) ("The danger arising from the mere act of agreement is less when the defendants are activated by no "criminal intent" and so may be expected to resist if, before committing the act, they discover its illegality.").

the government prove at least a probability that a defendant knew that "structuring" was illegal should be decided by this Court. At a minimum, due process requires that a defendant be able to present evidence of his lack of knowledge as an affirmative defense.

In *Lambert v. California*, 355 U.S. 217 (1958), this Court decided that due process requires that a defendant be shown to have had knowledge of a requirement that she had to register as a prior felon. In the absence of such knowledge the municipal ordinance at issue in *Lambert* became a trap for the unwary and criminalized ordinary behavior. The District Court rejected *Lambert*'s application here because Petitioner testified that he knew about the requirement that banks fill in forms for cash deposits over $10,000. However, Petitioner, and no doubt tens of millions of Americans, did not know that depositing amounts less than $10,000 to avoid these bank reporting requirements was an unlawful act *by the depositor*. Thus, the central principle in *Lambert* applies with full force to the circumstances of this case. *See also Morrissette v. United States*, 342 U.S. 240 (1952).

II. THE ISSUE OF WHETHER CONGRESS INTENDED THAT "STRUCTURING" BE CONSTRUED AS A STRICT LIABILITY CRIME SHOULD BE DECIDED BY THIS COURT.

This case raises the important issue about the mental state required for a conviction of the *malum prohibitum* crime of conspiracy to "structure" under 18 U.S.C. §371 and 31 U.S.C. §5324.

In *Ratzlaf v. United States*, 510 U.S. 135 (1994), this Court found that the government had to prove that a defendant knew that "structuring" was unlawful to obtain a conviction of the substantive offense of "structuring" under 31 U.S.C. §§5322(a) and 5324(3). Congress overturned the *Ratzlaf* decision in September 1994 by enacting the Money Laundering Suppression Act of 1994, Pub. L. No. 103-325, 108 (1994).[5] However, in doing so, Congress stated that "a person who innocently or inadvertently structures or otherwise violates section 5324 would not be criminally liable." 140 Cong. Rec. H6642-01, 1994 WL 400173 (Cong. Rec.). Prior to September 1994, the government would have had to prove that Petitioner knew that structuring was illegal in order to conduct the substantive crime of structuring or of conspiracy to structure. *See, e.g., United States v. Kim*, 65 F.3d 123 (9th Cir. 1995).

Petitioner conceded at trial that he had engaged in "structuring" activity, in the sense that he made deposits of amounts of more than $10,000 in smaller amounts to avoid reporting requirements. He openly, and in his own name, made deposits in amounts under $10,000 in order to avoid what he understood were government paperwork requirements imposed on banking institutions, not knowing that it was illegal to do so.

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[5] Petitioner and the government agree that the Act was intended to "correct" this Court's holding in *Ratzlaf* that the Government did not have to "prove" that a defendant "knew his or her conduct to be unlawful." Appellee's Brief ("App. Br.") at 18, citing legislative history of the 1994 Act.

The issue remaining after the 1994 Act is whether such evidence provides a defense to a "structuring" charge, i.e., whether such evidence demonstrates that Petitioner "innocently" or "inadvertently" structured.

Congress did not intend for §5324 to be construed as a strict liability crime. Congress specifically intended that "innocent" or "inadvertent" violations of §5324 not be subject to criminal penalties, as demonstrated by the legislative history to the 1994 Act. Moreover, Due Process requires at least that there is a probability that a person charged with "structuring" knew that it was illegal to do so. *See Lambert v. California*, 355 U.S. 217 (1958). The issue of what the scope of this defense to liability under the anti-structuring statutes is of great importance to the administration of criminal justice.

The Ninth Circuit did not answer these questions. The Ninth Circuit's opinion states that Congress had the right to eliminate the "willfulness" requirement in §5324. Pet. App. 2a-3a. Appellant does not contend otherwise. However, it does not follow that Congress intended for "structuring" to be a strict liability crime. This Court should use this case as the vehicle to determine that 31 U.S.C. §5324 is not a strict liability crime.

CONCLUSION

This Court should decide the issue left open in *Feola*. Does the government have to prove a "corrupt motive" to sustain a conspiracy connection in the context of a *malum prohibitum* crime? If not, does a criminal defendant have an affirmative defense to federal criminal conspiracy liability by demonstrating a reasonable lack of knowledge of the unlawfulness of "structuring?"

Under the theory of conspiracy liability endorsed by the Court of Appeals, an agreement to "structure" bank deposits, accompanied by the slightest of overt acts, even if no deposit is even made, may subject innocent businessmen to substantial federal criminal liability. The issue has broad significance to many law-abiding members of our community who may be caught up in the broad reach of conspiracy cases in circumstances where they have a reasonable belief that they are in violation of no criminal law.

This case also presents the issue of whether 31 U.S.C. §5324 is a strict liability crime. The mental state requirements for "structuring" under 31 U.S.C. §5324 and for conspiracy to "structure" in the aftermath of the 1994 amendments to §5324 present extremely important issues of national importance.

For these reasons, certiorari should be granted.

Respectfully submitted,

Paul L. Hoffman*
BOSTWICK & HOFFMAN, LLP

Harland W. Braun

Attorneys for Petitioner
Harold Samuel Wrobel

*Counsel of Record

APPENDIX A

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	No. 97-50352
	)	
	)	D.C. No. CR-96-01864-1-
Plaintiff-Appellee,	)	JNK
	)	
v.	)	ORDER DENYING THE
	)	PETITION FOR
HAROLD SAMUEL WROBEL,	)	REHEARING AND
	)	REJECTING THE
	)	SUGGESTING FOR
Defendant-Appellant.	)	REHEARING EN BANC

Before: FARRIS, O'SCANNLAIN, and FERNANDEZ, Circuit Judges.

The panel has unanimously voted to deny the appellant's petition for rehearing. The suggestion for rehearing en banc was circulated to the judges of the court, and no judge requested a vote for en banc consideration.

The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.

APPENDIX B

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	No. 97-50352
	)	
	)	D.C. No. CR-96-01864-1-JNK
Plaintiff-Appellee,	)	
	)	
v.	)	**MEMORANDUM***
	)	
HAROLD SAMUEL WROBEL,	)	
	)	
	)	
Defendant-Appellant.	)	

Appeal from the United States District Court
for the Southern District of California
Judith N. Keep, Chief District Judge, Presiding

Submitted April 9, 1998**
Pasadena, California

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel finds this case appropriate for submission without oral argument pursuant to 9th Cir. R. 34-4 and Fed. R. App. P. 34(a).

Before: FARRIS, O'SCANNLAIN, and FERNANDEZ, Circuit Judges.

Harold Samuel Wrobel appeals his conviction and sentence for conspiracy to structure currency transactions for the purpose of evading the reporting of those transactions by financial institutions. See 18 U.S.C. § 371; 31 U.S.C. § 5324(a). We affirm.

1. Wrobel first argues that the government was required to prove that he knew that structuring was illegal. His argument is without merit. In Ratzlaf v. United States, 510 U.S. 135, 114 S. Ct. 655, 126 L. Ed. 2d 615 (1994), the Supreme Court noted that the statute, as then written, did require knowledge of illegality, see id. at 137, 114 S. Ct. at 657, but suggested that if Congress wished to "dispense with the requirement" it could do so. Id. at 146, 114 S. Ct. at 662. Certainly the Court did not even hint that the Constitution would present an impediment to Congress's doing just that. In addition, four justices dissented from the proposition that the statute then required knowledge. See id. at 150, 114 S. Ct. at 663 (Blackmun, J. dissenting). They surely did not see a constitutional impediment. Nor did we in our earlier construction of the statute. See, e.g., United States v. Hoyland, 914 F.2d 1125, 1128-29 (9th Cir. 1990). Congress then amended the statute to remove any argument that knowledge of illegality was a statutory requirement. See 140 Cong. Rec. H6693 (daily ed. Aug. 2, 1994).[1]

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[1] Because knowledge was not required, the district court did not err in excluding evidence of lack of knowledge. See United

Wrobel also argues that in order to conspire to commit a crime like structuring, he must have had some additional corrupt motive. He cites no authority for that supposed requirement, and we have found none. In fact, we have negatively alluded to the general possibility of a requirement of that kind. See Lantis V. United States, 186 F.2d 91, 93 (9th Cir. 1950); see also United States v. Freed, 401 U.S. 601, 609 n.14, 91 S. Ct. 1112, 1118 n.14, 28 L. Ed. 2d 356 (1971). We need not explore the notion now. Even if a corrupt motive were needed, there was substantial evidence that Wrobel's motives were hardly pure.

2. Wrobel next claims that there was insufficient evidence to establish a conspiracy. Of course, the government had to submit sufficient evidence to establish all of the elements of the conspiracy. See United States v. Hegwood, 977 F.2d 492, 497 (9th Cir. 1992). Here there was evidence aplenty to show that Wrobel and his conspirators agreed to structure these transactions for the purpose of evading reporting requirements and thereby avoiding a paper trail, and that they took steps to carry out their plan. Indeed, they did carry it out. There can be little doubt that their conspiracy could be shown through the use of circumstantial evidence. See id. And coordinated action, like the action found here, can be "'strong circumstantial evidence.'" United States v. Fulbright, 105 F.3d 443, 448 (9th Cir.), cert. denied, ___ U.S. ___, 117 S. Ct. 1836, 137 L. Ed. 2d 1041 (1997).

States v. Komisaruk, 885 F.2d 490, 493 (9th Cir. 1989); United States v. Cottier, 759 F.2d 760, 763 (9th Cir. 1985).

3. The district court calculated Wrobel's offense conduct score using USSG § 2S1.3.[2] That required that the court ascertain the necessary sentencing facts, which it properly did by using the preponderance of the evidence standard. See United States v. Morrison, 113 F.3d 1020, 1021 (9th Cir.), cert. denied, ___ U.S. ___, 118 S. Ct. 583, 139 L. Ed. 2d 421 (1997); United States v. Restrepo, 946 F.2d 654, 659-60 (9th Cir. 1991) (en banc) . There was nothing unusual enough about this case to require that a higher standard of proof be used. See id. In so doing, the district court did not clearly err when it decided that Wrobel thought he was laundering drug money or acted in reckless disregard of what he was laundering. The court based its decision on, among other things, a co-conspirator's testimony that he told Wrobel that the funds were drug money, and Wrobel's own illogical, though creative, story about what he thought the funds were. Based upon those determinations, Wrobel was properly sentenced by using §§ 2S1.3(a) and (b) (1) rather than §§ 2S1.3(a) and (b)(2). In short, the district court was not required to determine that Wrobel's crime was a mere bevue. There was no error in the sentence imposed.[3]

AFFIRMED.

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[2] All references are to the guidelines effective November 1, 1996.

[3] Wrobel claims that despite the direction in § 251.3(a) that the district court must use the § 2F1.1 table to determine the guideline score, it really should not have done so. That claim is otiose. Wrobel might prefer a different direction from the Guideline Commission, but it, not he, is the guideline's provenance.

APPENDIX C

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA	CORRECTED JUDGMENT INCLUDING SENTENCE UNDER THE SENTENCING REFORM ACT
vs.	
HAROLD SAMUEL (2) WROBEL FBI#402287DB8	CASE NO. 96CR1864-K
	HARLAND BRAUN, RETD. DEFENDANT'S ATTORNEY

THE DEFENDANT
_X_ was found guilty on count two of the indictment after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

TITLE & SECTION
18 USC 371 AND
31 USC 5324(a)(2) AND (3)

NATURE OF OFFENSE
CONSPIRACY TO VIOLATE CURRENCY REPORTING REQUIREMENTS

COUNT NUMBER
2

The defendant is sentenced as provided in pages 2 through 4 of this judgment.
The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

__X__ The defendant has been found not guilty on counts 1, 3-7 and is discharged as to such count(s).

__X__ Pursuant to 18 USC 3003 the Court hereby imposes a penalty assessment in the amount of $50.00

It is further ordered that the defendant shall notify the United States Attorney for this district within thirty days of any change of residence or mailing address until all fines, restitution, costs and special assessments imposed by this Judgment are fully paid.

DEFENDANT:
HAROLD SAMUEL WROBEL (2)
CASE NUMBER: 96CR1864-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of:

12 MONTHS AND ONE DAY

THE COURT RECOMMENDS PLACEMENT IN A CAMP TYPE FACILITY

x The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons,

x on or before 7/7/97 1 PM.

JUNE 9, 1997
IMPOSITION OF SENTENCE

/s/
HON. JUDITH N. KEEP
UNITED STATES DISTRICT JUDGE

RETURN

I have executed this Judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By:_____
DEPUTY MARSHAL 96CR1864-K

DEFENDANT:
HAROLD SAMUEL WROBEL (2)
CASE NUMBER: 96CR1864-K

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 2 YEARS.

While on supervised release, the defendant shall not commit another federal, state or local crime and shall comply with the standard conditions that have been adopted by this court (set forth on the following page). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

_____ The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

1) The defendant shall report to the probation department as directed and follow the course of conduct as prescribed.

2) The defendant shall not possess firearms, explosive devices or dangerous weapons in any form.

3) The defendant shall submit his person to search, conducted

in a reasonable manner, at reasonable times, by a probation officer.

4) The defendant shall provide complete disclosure of personal and business financial records to the probation officer as requested.

5) The defendant shall obey all laws, federal, state and local, minor traffic excepted.

6) The defendant shall pay unto the United States of America, payable to the Clerk, U.S. District Court, a fine in the amount of $25,000.00. The Court orders the fine paid upon resolution of the administrative forfeiture case.

The Court finds the defendant able to pay the costs of incarceration.

DEFENDANT:
HAROLD SAMUEL WROBEL (2)
CASE NUMBER: 96CR1864-K

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on probation or supervised release pursuant to this Judgment:

1) The defendant shall not commit another federal, state or local crime;

2) The defendant shall not leave the judicial district without the permission of the court or probation officer;

3) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

4) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

5) The defendant shall support his or her dependents and meet other family responsibilities;

6) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons;

7) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment;

8) The defendant shall refrain from excessive use of alcohol and shall not purchase, use, distribute, or administer any narcotic or controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

9) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

10) The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

11) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

12) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

13) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

14) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such

notifications and to confirm the defendant's compliance with such notification requirement.

These conditions are in addition to any other conditions imposed by this Judgement.

APPENDIX D

APPENDIX D

U.S.C. §5324 Structuring transactions to evade reporting requirement prohibited

(a) Domestic coin and currency transactions.--No person shall for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section--

(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section;

(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section that contains a material omission or misstatement of fact or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.